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Arraignment

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

12 CR 973 (PGG)

5 MATHEW MARTOMA,

6 Defendant.

7 -----x

8
9 January 3, 2013
11:35 a.m.

10 Before:

11 HON. PAUL G. GARDEPHE,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

United States Attorney for the
Southern District of New York

16 BY: ARLO DEVLIN-BROWN

17 Assistant United States Attorney

18 CHARLES STILLMAN

NATHANIEL MARMUR

19 Attorneys for Defendant

20 Also Present: Matthew Callahan, FBI

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1 THE DEPUTY CLERK: All rise.

2 THE COURT: Please be seated.

3 (Case called)

4 THE DEPUTY CLERK: Is the government ready?

5 MR. DEVLIN-BROWN: Yes. Good morning, your Honor,

6 Arlo Devlin-Brown for the government. With me at counsel table
7 is Special Agent Matthew Callahan with the FBI.

8 THE DEPUTY CLERK: Defendant ready?

9 MR. STILLMAN: Yes, your Honor. Good morning, Charles
10 Stillman and Nathaniel Marmur for Mathew Martoma.

11 THE COURT: Good morning.

12 MR. MARMUR: Good morning.

13 THE COURT: I believe we're here for purposes of
14 arraigning the defendant, is that correct?

15 MR. STILLMAN: Yes, your Honor.

16 THE COURT: All right. Mr. Martoma, would you please
17 rise?

18 You're here with Mr. Stillman and Mr. Marmur this
19 morning as your attorneys, is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you received a copy of the indictment
22 which reflects the charges against you?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And have you had an opportunity to read
25 the indictment?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And have you discussed it with your
3 attorneys?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: You should understand that in count one of
6 the indictment you are charged with violating Title 18 United
7 States Code, Section 371, which prohibits conspiring or
8 agreeing to commit an offense against the United States, in
9 this case securities fraud through an insider trading scheme
10 involving the sale and short sale of stock in two companies,
11 Wyeth and Elan Corporation.

12 You're charged in count two of the indictment with
13 actually committing securities fraud through insider trading
14 involving the sale or short sale of stock in Elan Corporation
15 in violation of Title 15 United States Code, Section 78jb, and
16 78ff, and Rule 10(b)(5).

17 You are charged in count three of the indictment with
18 another count of securities fraud through insider trading
19 involving the sale or short sale of stock in Wyeth, again in
20 violation of 15 United States Code, Section 78jb and 78ff, and
21 Rule 10(b)(5).

22 Do you wish me to read the indictment to you now in
23 open court?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: With respect to count one of the

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1 indictment, how do you plead, guilty or not guilty?

2 THE DEFENDANT: I plead not guilty, your Honor.

3 THE COURT: With respect to count two of the
4 indictment, how do you plead, guilty or not guilty?

5 THE DEFENDANT: I plead not guilty, your Honor.

6 THE COURT: And with respect to count three of the
7 indictment, how do you plead, guilty or not guilty?

8 THE DEFENDANT: I plead not guilty, your Honor.

9 THE COURT: You may be seated.

10 All right, Mr. Devlin-Brown, do you want to tell me
11 about what the nature and magnitude of discovery in the case
12 will be?

13 MR. DEVLIN-BROWN: Yes, your Honor. I can advise you
14 of that, as well as our plan to produce it in the timeframe for
15 doing so.

16 The discovery in this case consists primarily of
17 trading records and phone records, as well as e-mails and other
18 business records from various entities, but principally of
19 relevance are from Elan, as well as the Hedge Fund and the
20 Expert Networking Firm that are referred to in the indictment.

21 The Government's plan is to produce all of this
22 discovery in electronic form, including limited productions
23 that were made to the government in paper. And in most cases
24 including with the voluminous discovery, such as discovery
25 produced by the Hedge Fund, that means producing it in a format

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1 that is going to be, we hope, in the means that can be loaded
2 into any sort of database the defense chooses to use and can be
3 searched through various fields, including the text of the
4 document.

5 The vast majority of this discovery we are actually in
6 the process of copying right now, and plan to provide, assuming
7 the copying goes without issue, to the defense by the end of
8 the day tomorrow.

9 The remaining discovery we expect to be substantially
10 complete by January 15th. And there is only two caveats which
11 I would add, your Honor. One is that there is an ongoing
12 investigation in this and related matters, and it's of course
13 entirely likely that in connection with those investigations,
14 the government will receive new documents, and when we do we
15 will provide those to the defense, assuming they're
16 discoverable under the rules.

17 The second exception, of course, is to the extent the
18 issues that are going to be disputed either legally or
19 factually become clearer through motion practice, or as we
20 prepare for trial, and there's other material that in light of
21 that seems that it should be turned over to the defense, we
22 will of course turn that material over as well. But we're
23 going to obviously take a broad approach to discovery in the
24 first instance and produce substantially all of it by
25 January 15th.

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1 THE COURT: All right. Mr. Stillman, do you
2 anticipate any motions in the case?

3 MR. STILLMAN: At this point I'm not quite sure I have
4 an answer for your Honor. The answer is that there may very
5 well be, but for me to give you an answer now would just be
6 meaningless in the circumstances.

7 I have -- Mr. Devlin-Brown and Mr. Marmur and I did
8 have a chat this morning before coming here, and I could throw
9 out to you what we have been talking about to see whether that
10 fits with your Honor's view as to how you'd like the case to go
11 forward, and that is this.

12 Taking Mr. Devlin-Brown, you know, as he has explained
13 it to us, we, at his request, delivered to him a hard drive
14 capable of carrying a terabyte of information. Four months ago
15 I could not have told you what a terabyte was, but I can
16 actually tell you that I know it's a thousand gigabytes. And
17 now if you ask me what a thousand gigabytes is, now you'd be
18 pushing go to another place, but I gather it's a lot of
19 material.

20 And so what we planned is as follows, your Honor:
21 That after we get the terabyte of material, we'll take a
22 look -- we're going to get it loaded, we have a service already
23 lined up ready to go, they're very competent, we used them
24 earlier last year with four terabytes, and subject to some
25 glitches and things, were able to make it work. Once we get

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1 that, we will then, as soon as we get a sense of what we have,
2 then get to Mr. Brown a Rule 16 discovery letter to the extent
3 that we're trying to pick up things that are not on the, you
4 know, included within the terabyte.

5 We had talked about trying to do that in 30 days. I
6 will just -- and I apologize, but just tweak that to say to do
7 it 30 days from the actual getting of the terabyte, and get him
8 that. And then thought, your Honor, as a suggestion that we
9 perhaps reconvene here, and the date we had talked about
10 subject to your Honor's schedule, would be March the 5th, which
11 is roughly about 60 days from today, and report to you as to
12 where we are. And by that point we may have an idea of what
13 motions we think are doable and ask your Honor to set a
14 schedule and to determine whether or not we have any
15 discovery-type issues.

16 The other thing I'd like to suggest is that because of
17 this kind of experience that we had last year where, with no
18 fault of anybody in the lawyering side of this, there was some
19 technical issues with what was on the hard drives, we're not
20 going to hold that back. If we see it, we'll be in touch with
21 Mr. Devlin-Brown, report that to him and try to get all that
22 technical stuff worked out so that we're working with the same
23 material. And then, as I say, on the 6th of March hopefully be
24 in a position to -- if we do have motions to make them. If I
25 don't, I'll tell you that too. But if we do, review that with

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1 your Honor, ask for a schedule, and go forward from there.

2 THE COURT: All right. Did you say the 5th or the
3 6th?

4 MR. STILLMAN: Oh, the 5th. I'm sorry. If you don't
5 mind, your Honor, please. Yes.

6 THE COURT: Let me consult with my Deputy as to the
7 5th. All right, I can offer you 12:30 on the 5th. Is that
8 convenient?

9 MR. STILLMAN: Yes, sir.

10 MR. DEVLIN-BROWN: That's fine, your Honor.

11 THE COURT: All right. I take it, Mr. Devlin-Brown,
12 you're agreeable to everything that Mr. Stillman just said
13 about the discovery process and so forth?

14 MR. DEVLIN-BROWN: That all sounds fine. And we too
15 and the government are familiar with and will try to work with
16 all of the technical issues that sometimes go along in cases
17 like this.

18 MR. STILLMAN: I apologize to Mr. Devlin-Brown for not
19 raising this with him outside of the courtroom, but I just want
20 to ask him on the record, if I could, please. We're assuming
21 that there are no Title III wiretaps involved in this lawsuit.

22 MR. DEVLIN-BROWN: We don't plan to produce any Title
23 III wiretaps in discovery, and at this point have no reason to
24 believe any would be relevant to this case.

25 MR. STILLMAN: Thanks.

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1 THE COURT: Does the government wish to exclude time
2 between now and March 5th?

3 MR. DEVLIN-BROWN: Yes, your Honor, so that defense
4 can review the discovery.

5 MR. STILLMAN: And we consent to that, your Honor.

6 THE COURT: All right. Then I will exclude time
7 between today and March 5th, 2013 under the Speedy Trial Act
8 pursuant to Title 18 United States Code, Section 3161(h)(7)(a)
9 to permit defense counsel to review the discovery materials to
10 be produced by the government, to determine whether there will
11 be any pretrial motions in the case. I do find that the ends
12 of justice served by the granting of this continuance outweigh
13 the best interests of the public and the defendant in a speedy
14 trial.

15 I do have an order that you handed up. I haven't had
16 an opportunity to read it yet. I'll read it back in chambers.
17 If I have any problems with it, I'll let you know, but I
18 understand it's been signed by both sides.

19 MR. DEVLIN-BROWN: Yes, your Honor.

20 MR. STILLMAN: Yes, sir.

21 THE COURT: Okay. Anything else we should take up
22 this morning?

23 MR. STILLMAN: I think we're under way, your Honor.

24 THE COURT: All right.

25 MR. DEVLIN-BROWN: Nothing from the government.

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1 THE COURT: All right, thank you.

2 (Adjourned to March 5, 2013 at 12:30 p.m.)

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